IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting
Chapter VIII Rule 32 (2) (b)

Description of the Case.

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

Criminal Appeal No. 120 of 2003

1. Rais S/o Chhote
R/o Indira Nagar, Haldwani
District – Nainital …Appellant

Versus

State of Uttaranchal … Opp. Party

**With
Criminal Appeal No. 415 of 2003**

2. Mehfooz S/ Sri Mehboob
R/o Chopla, Subhash Nagar, Bareilly
P.S. Kotwali
District – Bareilly
At present R/o Indra Nagar Thokar,
Haldwani,
District – Nainital …Appellant

Versus

State of Uttaranchal … Opp. Party

Approved for reporting

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Not approved for reporting.

Date of Decision 6th April, 2005.

Initial of Judge.

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2. Criminal Appeal No. 415 of 2003

Mehfooz S/ Sri Mehboob
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Sri Zafar Ullah Siddiqui, Sri Dinesh Chuhan, Sri I.S. Mehra, Sri R.B Agarwal, Sri M.K. Agarwal learned counsel for the appellants.
Sri K.S. Rautela, learned counsel for the State.

Hon'ble B.C. Kandpal, J.

These criminal appeals arise out against the judgment and order dated 10.03.2003 passed by the Additional District and Sessions Judge / 1st Fast Track Court, Haldwani, Nainital in S.T. No. 109/2001 u/s 394, 397 & 411 I.P.C. connected with S.T. No. 106/2001 u/s 4/25 Arms Act State Vs. Rais and S.T. No. 108/2001 u/s 25 Arms Act State Vs. Mahfooj, whereby learned Sessions Judge convicted the appellants u/s 394/397 I.P.C. & 411 I.P.C. and Section 25 and 4/25 Arms Act respectively and sentenced thereon for 7 years R.I., one year R.I and for one year R.I. respectively.

Brief facts of the prosecution case are that on 08.03.2001 informant Subhash lodged a written report in the police station, Haldwani with the allegation that he digs the sand form Gola river and resides and Rajpura in house of Gyan Masiah. In other different rooms of the same premises, Jamuna Mukhia, Bipin Mukhia, Ramayan Mukhia, Chandirika Mukhia, Tandoor Mia, Rajendra Mukhia and Panna Lal reside as tenants. At about 4:10 a.m. in the morning of 08.03.2001, two assailants entered into the house and out of these two, one was having country made pistol another was having knife in his hand. Both of them entered into the room of Rajender Mukhia and threatened all the persons by showing country made pistol and knife. These assailants looted the money and shawl pertaining to the residents three. These appellants also snatched HMT watch of the complainant Subhash. The complainant thereafter apprehended one of the assailants who fired at the complainant but the same did not hit him. One assailant was apprehended with country made pistol and another made his escape good from the place of the occurrence. The Police came at the spot after hearing hue and cry and also apprehended the another assailant who was trying to run away from the place of the occurrence. The police recovered the knife from he possession of the another assailant.

Both the assailants were searched and one of the assailants told his name Mahfooz. Some looted cash amount was also recovered form his possession which was as follows:

100 x 6 + 50x 5 + 10 x 15 + 5x 3 + 2 x 1 + 1 x 1.

One shawl from the possession of Mahfooz and a county made pistol having dead cartridge in its barrel was also recovered.

The another person who was arrested by the police at the spot disclosed his name as Rias and a knife was recovered form his possession. Some looted cash amount was also recovered form his possession and that was as follows:

100 x 14 + 50 x 5 + 20 x 2 + 10 x 31.

A snatched watch from his possession belonging to the complainant was also recovered.

The police took both the apprehended assailants to the police station including the recovered money and other articles recovered form their possession.

Injured Subhash who sustained injuries during the course of the occurrence, was taken to hospital at Haldwani on 08.03.2001 at 6:50 a.m. and his medical examination was conducted by Dr. K.C. Joshi, P.W. 6.

The doctor K.C. Joshi, P.W. 6 also medically examined accused/appellant Mahfooz on 08.03.2001 at 6:10 a.m. and found that injuries could have been caused at 4:10 a.m. on 08.03.2001.

Another injured Jamuna Muhia was also medically examined by Dr. H.L. Kushwah, P.W. 3 on 08.03.2001 at 8.00 a.m.

On the same day at about 9:05 a.m. P.W.3 Dr. H.L. Kushwah also medically examined Ramyan Mukhia. The Doctor opined that the injuries on the persons of Jamuna Mukhia and Ramayan Mukhia could be caused on 08.03.2001 at 4:15 a.m.

The police prepared the site plan and recorded the statement of the concerned eyewitnesses and formal eyewitnesses and came to the conclusion that the accused/appellants had committed an offence as alleged by the complainant. The police thereafter submitted the chargesheet against the accused/appellants.

After the submission of the chargesheet, the case was committed before the court of Sessions and the charges u/s 394/397, 411 were leveled against the accused/appellants vide order dated 20.11.2001. The trial court also leveled the charges u/s 25 Arms Act against the accused/appellant Rais on the same day, i.e. 20.11.2001. The accused persons denied the charges leveled against them and claimed their trial.

The prosecution in order to bring the guilt of the accused/appellants to home, produced P.W.1. Subhash Mandal, P.W. 2 Jamuna Mukhia, P.W.3 Dr. H.L. Kushwah, P.W. 4 S.I. Mohd. Jahir Khan and P.W. 5 Kewala Nand Arya or P.W. 6 Dr. K.C. Joshi.

After the evidence of the prosecution was over, the statement of the accused/appellants were recorded u/s 313 Cr.P.C. The accused person did not adduce any evidence in their defence.

Learned trial court after having perused the entire evidence on record and hearing learned counsel for the parties convicted the accused/ appellants Mahfooz and Rais u/s 394/397 I.P.C. and sentenced them to 7 years R.I. The trial court further convicted the accused/appellants u/s 411 I.P.C. and sentencing them to one year R.I. each. The learned trial court further convicted the accused/appellant Mahfooz u/s 25 Arms Act and accused/appellant Rais u/s 4/25 Arms Act and sentenced both of them one year R.I. each vide judgment and order dated 10.03.2003.

Feeling aggrieved by the aforesaid judgment and order, both the accused/appellants preferred the aforesaid appeals which has been placed before me for final disposal. As both the appeals arise out against the same judgment and order, therefore, are being decided together.

I have heard learned counsel for the appellants and learned A.G.A. and perused the record.

As per the prosecution case, the accused/appellants on 08.03.2001 entered inside the house of Gyan Masiah alongwith country-made pistol and knife and thereafter they looted Ramayan Mukhia, Jamuna Mukhia, Subhash Mandal and other habitants residing in the premise. These accused/appellants also caused injuries on the person of the victims. The accused/appellant, Mehfooz was apprehended at the spot with country made pistol and a cartridge in the barrel as well as certain amount was recovered form his possession which was looted from different persons. Looted shawl was also recovered form him at the spot. Another accused/appellant, Rias was also apprehended by the police while making his escape good from the place of the occurrence and from his possession an amount of Rs. 2,000/- which was looted from different persons at the place of the occurrence as well as a knife was recovered. Apart of these articles, a looted wrist watch was also recovered from his possession.

P.W. 1 Subhash Mandal and P.W. 2 Jamuna Mukhia are the victims as they have sustained injuries during the course of the occurrence. These two witnesses have specifically and categorically deposed about the incident in their depositions. P.W. 1, Subhash Mandal was medically examined on the same day in the hospital and the Doctor opinied that the injuries sustained by him were fresh and could be caused at the time of the occurrence.

Likewise the injuries of Jamuna Mukhia were also medically examined by P.W. 3 Doctor H.L. Kushwah and as per his opinion these injuries could have been caused at the time of the occurrence.

Apart of the aforesaid two witnesses produced by the prosecution, P.W. 4 S.I. Mohd. Jahir Khan has also

supported the prosecution case as he deposed before the court that on 08.03.2001 he was posted Incharge of Police Outposet Mangalparao and he was on petrol duty. As soon as he reached Rajender Nagar at 4:10 a.m. in the morning, the police party head the sound of firing and when he along with his team reached near Dharm Kanta they saw a person running towards western side and certain other peoples were chasing him. This witness has further deposed that he alongwith other police constables apprehended that person and on an interrogation it revealed that he was Rais. A knife, Rs, 2000/- in cash and one HMT watch was recovered from his possession. Persons chasing the accused/appellant Rais told the police that he was the same person who committed loot recently. Thereafter, police took this person to the place of the occurrence where another assailant was already in the custody of the public who disclosed his name as Mahfooz. All these prosecution witnesses have established the manner of the incident in which the same is alleged to have been occurred.

Apart of the aforesaid fact, the most crucial point in this case is the medical examination report of accused/appellant Mahfooz. As per the deposition of P.W.6 Mahfooz were medially examined on 08.03.2001 at 7:10 a.m. as this accused was brought at the hospital by constable Jasbir Singh. The Doctor opined that all these injuries could have been caused on 08.03.2001 at 4:10 a.m., i.e. at the time when the incident took place. Therefore, the injures on the persons of accused/appellants Mahfooz clearly indicates this aspect that accused/appellant Mahfooz was present at the time and place of the occurrence and during the course of the occurrence he sustained those injuries by the public while he was apprehended by the public.

Nothing could be revealed in the cross examination of the prosecution witnesses which may suggest that these witnesses are either telling lie or they were not present at the place and the time of the occurrence. The defence also could not establish or show form any iota of evidence available on record that the accused/appellants had any kind of enimity with the complainant and other victims of this case. Therefore, the possibility of their false roping in the crime is not there.

Learned counsel for the appellants has vehemently stressed on this aspect of the matter that the recovery made by the prosecution at the spot appears to be doubtful. He has invited my attention towards the statement of the prosecution witnesses by which it revealed that the recovery memo was prepared at the police station.

I do not find any force in this argument.

In case, if there be any latches on the part of the investigation in this regard, the same is not going to discredit the entire prosecution case and the recovery of the looted cash money can not be doubted in any manner. In this case, two persons who have been the victims of the case, i.e., Subhas Mandal and Jamuna Kukhia have sustained injuries on their person and their injuries find complete corroboration with their ocular versions. Their presence also cannot be doubted at the time of the place of the occurrence.

Learned counsel for the appellants has also submitted that from the possession of Mahfooz an amount of Rs. 968/- is alleged to have been recovered while it appears that when the packet was opened before the court an amount of Rs. 1,018/- found therein. Therefore, the amount as has been alleged by the prosecution witnesses, Rs. 968/- is recovered at the spot from the possession of the accused/appellant Mahfooz makes the entire recovery doubtful.

I do not find any force in this argument.

There appears to be counting mistake because as per the recovery memo an amount of RS. 1,018/- was recovered from the possession of the accused/appellant Mahfooz but due to over sight Rs. 50/- could not be counted towards the total amount and the amount of Rs. 968/- could be scribed while the recovery of the actual amount of Rs. 1018/- is there from the possession of the accused/appellant Mahfooz. Therefore, this technical mistake does not make the entire recovery doubtful.

Learned counsel for appellant has invited my attention towards certain minor discrepancies and contradictions in the evidence of prosecution witnesses, but I think that on total scrutiny of the evidence of prosecution witnesses, the case is established beyond reasonable doubt. Other contradictions in the deposition of witnesses are not going to materially change the prosecution case.

Learned counsel for the appellant has further argued that the order of the District Magistrate according sanction for prosecuting the accused/appellant Mahfooz under the Arms Act is mechanical one and on this sanctioned order no cognizance could have been taken by the court concerned.

I again find myself unable to appreciate this argument. The sanctioned order is Ex. Ka.13 and perusal of the same nowhere indicates that it has been passed in a mechanical manner.

In the same manner a knife has been recovered from the possession of the accused/appellant Rais although in the chargesheet submitted against the accused/appellant Rais u/s 4/25 Arms Act, the description of the notification has not been mentioned, but I think that the same is not going to affect the prosecution case as the trial court has clearly mentioned the notification number in the charge framed against this accused. Apart of the aforesaid circumstances,
this fact cannot be ignored that the accused/appellants were

arrested at the spot alongwith looted money, shawl as well as wrist watch. The accused/appellants are residents of another localities and they could not advance any reason of their presence at the place of the occurrence during the odd hours. As I have already observed that the accused/appellants have no enimity with the local people or the victims who sustained injuries during the course of the occurrence and from whom the money was looted.

For the reasons discussed above, I come to the conclusion that the trial court has rightly convicted and sentenced the accused appellants vide impugned judgment and order. I do not find any embellishment or material contradiction in the evidence adduced by the prosecution in order to bring the guilt of the accused/appellants to home. The trial court has rightly assessed the evidence and come to the conclusion that the charges leveled against the accused/appellants are established beyond reasonable doubt. I do not find any ground for interference in the impugned judgment and order passed by the trial court. The appeal is dismissed. The impugned judgment and order passed by the trial court is hereby confirmed.

Copy of the order be placed in criminal appeal No. 415 of 2003, Mehfooz S/o Sri Mehboob Vs. State.

(B.C. Kandpal, J.)

6th April, 2005
Shiv